

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RAY CHARLES HARRIS,

Plaintiff,

v.

PIERCE COUNTY JAIL
CLASSIFICATION AND
ADMINISTRATION OFFICE, MARK
LINDQUIST, G PERO, MASKO,
ALEXANDER, C JAMES, T M
DONALD, ROBERT M QUILLIAN,
BARBARA COREY,

Defendants.

CASE NO. 3:16-CV-05044-BHS-DWC

REPORT AND RECOMMENDATION

Noting Date: May 6, 2016

The District Court referred this action, filed pursuant to 42 U.S.C. § 1983, to United States Magistrate Judge David W. Christel. Presently before the Court is a letter from Plaintiff Ray Charles Harris requesting the Court dismiss Defendant Sergeant Alexander. Dkt. 15. The Court interprets this letter as a Motion for Voluntary Dismissal ("Motion"). The undersigned recommends Defendant Alexander be dismissed pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

BACKGROUND

On February 16, 2016, this Court declined to serve Plaintiff's Complaint because it failed to state a claim for which relief could be granted. Dkt. 8. The Court, however, gave Plaintiff until March 31, 2016 to file an amended complaint. *See* Dkt. 8, 11. On March 16, 2016, Plaintiff filed his Amended Complaint. Dkt. 13. Plaintiff filed the pending Motion on March 24, 2016, prior to this Court entering an Order directing service of the Amended Complaint. *See* Dkt. 16, 18.

DISCUSSION

Federal Rule of Civil Procedure 41 sets forth the circumstances under which an action may be dismissed. Under Rule 41(a)(1), an action may be voluntarily dismissed without prejudice by the plaintiff if the plaintiff files a notice of dismissal before the defendant files an answer or summary judgment motion and the plaintiff has not previously dismissed an action "based on or including the same claim." Fed.R.Civ.P. 41(a)(1); *Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th Cir. 1997). Once the defendant has responded to the complaint, the action may only be dismissed by stipulation of dismissal signed by all parties who have appeared or "by court order, on terms that the court considers proper." Fed.R.Civ.P. 41(a)(1), (2).

Plaintiff requested the dismissal prior to any defendant filing an answer or summary judgment motion. *See* Dkt. 15. The Court also finds Plaintiff has not previously dismissed an action based on the same claim. Therefore, Plaintiff's Motion (Dkt. 15) should be granted pursuant to Rule 41(a)(1).

CONCLUSION

For the foregoing reasons, the Court recommends Defendant Alexander be dismissed without prejudice from this action.

1 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have
2 fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P.
3 6. Failure to file objections will result in a waiver of those objections for purposes of *de novo*
4 review by the district judge. *See* 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit
5 imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set the matter for consideration on May
6 6, 2016, as noted in the caption.

7 Dated this 18th day of April, 2016.

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10 David W. Christel
United States Magistrate Judge
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